

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF ALABAMA, EASTERN DIVISION

VFS LEASING CO.

Plaintiff,

vs.

G.F. KELLY, INC. d/b/a KELLY  
TRUCKING; and GUY KELLY,

Defendants

)  
CIVIL ACTION NO.  
3:06cv638-SRW

**MOTION TO CONTINUE SUMMARY JUDGMENT PROCEEDINGS**

COMES NOW the Plaintiff, VFS Leasing Co., and moves the Court to continue the summary judgment proceedings and extend the briefing schedule for its summary judgment motion. In support of this motion to continue, Plaintiff states as follows:

1. Plaintiff moved for summary judgment on November 28, 2006.

After receiving extensions to conduct discovery and submit a response in opposition, Defendants submitted their opposition to summary judgment on February 13, 2006. Under this Court's Scheduling Order, Plaintiff may file its reply brief in support of summary judgment on or before February 26, 2007.

2. Defendants' opposition to summary judgment raises the affirmative defense of mitigation of damages. Defendants bear the burden of proof on this defense. *Prudential Ballard Realty Co. v. Weatherly*, 792

**MOTION GRANTED**